

1 UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF INDIANA  
3  
4 SOUTH BEND DIVISION

5 STEPHEN L. SNOW

6 *Plaintiff*

7 v.

8 FOREST RIVER, INC.

9 *Defendant*

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§  
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§  
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§

CIVIL ACTION NO:

JURY TRIAL REQUESTED

11 COMPLAINT

12 I. Parties

13  
14 1. Plaintiffs, **STEPHEN L. SNOW**, is an individual that is now and has been at all  
15 times a citizen of the State of Arkansas.

16 2. Defendant, **FOREST RIVER, INC.**, hereinafter "**FOREST RIVER**" is a  
17 corporation authorized to do and doing business in the State of Indiana with its principal place  
18 of business located at 900 CR 1, PO Box 3030, Elkhart, in, 46515, USA and is a warrantor of  
19 a Recreational Vehicle that Plaintiffs purchased and is a merchant in goods of the kind involved  
20 in this case.  
21

22 **FOREST RIVER** agent for service of process is Joseph Greenlee, 900 County  
23 Road 1, Elkhart, IN 46514.  
24

25 II. Jurisdiction

26 3. This court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1) because  
27 Plaintiffs, and Defendants are citizens of different states and the amount in controversy exceeds  
28 \$75,000.00. excluding interest and costs.

This court also has jurisdiction over this lawsuit because the suit arises under the Magnuson-Moss Warranty Act pursuant to 15 USC § 2310(d).

This court also has supplemental jurisdiction under 28 USC § 1367 over Plaintiff's state law claims because said claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the United States Constitution.

### III. Venue

5. Venue is proper in this district under 28 U.S.C. §1391(a)(3) because the Defendant is subject to personal jurisdiction in this district and there is no other district where the suit may be brought.

### IV. Conditions Precedent

6. All conditions precedents have been performed or have occurred.

### V. Facts

#### A. The Transaction

7. On March 5, 2016, Plaintiffs purchased a new **2016 PRIMETIME SPARTAN** bearing VIN 5ZT3ST2FXGG300641, hereinafter "**SPARTAN**," from **COMPASS RV PROTECTION**.

The "**SPARTAN**," was purchased primarily for Plaintiffs' personal use. The sales contract was presented to Plaintiffs at the dealership and was executed at the dealership.

8. The total sales price of the **SPARTAN** including finance charges will be \$64,645.80.00. Plaintiffs made a down payment in the amount of \$15,000.00. The total damages to Plaintiff will be over \$75,000.00. Civil or Punitive penalties for breach of warranty

1 are recoverable under the Warranty Act, if they are recoverable for breach of warranty under the  
2 applicable state law. See *Hughes v. Segal Enterprises, Inc.*, 627 F. Supp. 1231, 1238 (W.D.  
3 Ark. 1986); *Chariton Vet Supply, Inc. v. Moberly Motors Co.*, 2:08CV47MLM, 2009 WL  
4 1011500 (E.D. Mo. Apr. 15, 2009).

### 6 B. Implied Warranties

7 9. As a result of the sale of the SPARTAN, by Defendants to Plaintiffs, an implied  
8 warranty of merchantability arose in the transaction which included the guarantee that the  
9 SPARTAN, would pass without objection in the trade under the contract description; and that  
10 the SPARTAN, was fit for the ordinary purpose for which such motor vehicles are purchased.  
11

12 10. Subsequent to the sale, an implied warranty arose in connection with the repairs  
13 performed by the Defendants. Specifically, the Defendants impliedly warranted that the repair  
14 work had been performed in a good and workmanlike manner.  
15

### 16 C. Express Warranties

17 11. In addition to the implied warranties that arose in the transaction, certain  
18 representations and express warranties were made, including, that any malfunction in the  
19 SPARTAN, occurring during a specified warranty period resulting from defects in material or  
20 workmanship would be repaired, and that repair work on the SPARTAN, had, in fact, repaired  
21 the defects.  
22

23 12. Plaintiffs's purchase of the SPARTAN, was accompanied by express warranties  
24 offered by the Defendants, **FOREST RIVER's**, and extending to Plaintiffs. These warranties  
25 were part of the basis of the bargain of Plaintiffs's contract for purchase of the SPARTAN.,  
26

27 13. The basic warranty covered any repairs or replacements needed during the  
28

1 warranty period due to defects in factory materials or workmanship. Any required adjustments  
2 would also be made during the basic coverage period. All warranty repairs and adjustments,  
3 including parts and labor, were to be made at no charge. Additional warranties were set forth  
4 in the **FOREST RIVER's** warranty booklet and owners manual.  
5

#### 6 **D. Actionable Conduct**

7 14. In fact, when delivered, the **SPARTAN**, was defective in materials and  
8 workmanship, with such defects being discovered within the warranty periods. Many defective  
9 conditions have occurred since purchase, including, but not limited to, the following statement  
10 in the Plaintiffs' own words to **FOREST RIVER's** :  
11

12 **"Mar. 3, 2016**

13 **Purchased Tay Hauler from Colaw RV in Carthage, MO.**  
14 **We had mentioned during the initial walk through that the**  
15 **jacks an the automatic leveling system seemed law but we**  
16 **were assured they were not. On the way home ta Searcy,**  
17 **AR, the piping that seals the screws securing the under**  
18 **part beneath the front of the King Pin area of the RV came**  
19 **loose. I tried to stuff it back in but as we proceeded it**  
20 **continued to came loose. I duct taped it. We stopped for the**  
21 **night at an RV park in Fayetteville and during the night**  
22 **discovered a window in the large passenger side slide**  
23 **would not close. We had to stuff a towel in the area ta keep**  
24 **the rain from coming in through the window. Remember,**  
25 **BRAND NEW RV!**

26 **Mar. 19, 2016**

27 **Headed ta Florida on Spring Break ta visit family. On the**  
28 **way down we pulled into a mall area in Alabama and as we**  
29 **had mentioned earlier the jacks being too low we scraped**  
30 **several jacks and bent one ta the paint it could not be used**  
31 **the remainder of the t rip. Several other times during the**  
32 **trip we scraped some of the other jacks just pulling into or**  
33 **out of service stations or going across dips on roads.**

34 **BY THE WAY, THIS IS NOT THE FIRST RV WE HAVE**

1 OWNED AND TRAVELED WITH. WE HAVE BEEN  
2 RVING ABOUT 25 YEARS. IF MY MEMORY SERVES ME  
3 CORRECTLY THIS IS OUR gm RV. WE ARE NOT  
4 ROOKIES AT THIS.

5 After returning from the Spring Break escapade, I set up  
6 a time ta take off work and deliver the RV to Colaws which  
7 is 300 miles each direction. I spent the night on Thursday  
8 in a Walmart parking lot and arrived early Friday. They  
9 started working on a list of issues from the sound system in  
10 the BRAND NEW RV not only working off and on ta the  
11 bent jack, the piping mentioned earlier, to the window that  
12 would not close (seems you have to stand an the couch and  
13 slam it really hard and ta open it you have to stand on the  
14 couch and pound on it until it finally and stiffly opens).  
15 There were also scrapping noises coming from beneath the  
16 kitchen slide in. I was allowed ta stay in my RV in the shop  
17 over night so they could continue working on it. I left late  
18 Saturday hoping that all was good. I did appreciate the  
19 hard work and concern Steve Jones, the service manager at  
20 the time, afforded me. BUT, on the way home the piping  
21 was flaying to and fro as I drove down the road. Duct taped  
22 again .

23 In June of 2016

24 in my BRAND NEW RV, my wife and I left to go RVing in  
25 the Great Smokey Mtns. area. Upon arriving I could not  
26 get the automatic leveling system to work, so I did it  
27 manually. Then the battery would not hold a charge so I  
28 proceeded to the local Auto Zone in Pigeon Forge, TN and  
sure enough it was dead. I called Steve Jones back at  
Colaws and he said buy one send him a picture of the  
receipt and he would reimburse me. After sending and  
resending and reminding him and others, I received the  
check for the battery on Oct. 29, 2017. A year and a half  
later.

We left there and headed to Colorado to go RVing some  
more. Upon arriving in CO and taping the piping again  
and not having the use of the automatic leveling system,  
I was getting ready to dump the "potty water" in Rocky  
Mountain National Park with a line of RVs waiting their  
turns behind me and as I opened the cap on the drain for  
the system my "poop" ran all over the ground. I have

1 "dumped" "potty water" and grey water many times in  
2 the past and NEVER had that happen. Arriving in  
3 Southern CO to continue our vacation, the dumping of the  
4 sewage happened again. We have pictures. RV parks do  
5 not like that and again, I am very adept at it. We finally  
6 left and headed home and I thought we might have a roof  
7 leak as I found a wet spot in the middle of the upstairs  
8 bed after a rain. Then after a storm in Oklahoma it was  
9 definitely leaking onto our bed.

10 *July 29, 2016*

11 After arriving home, and talking to the people back at  
12 Colaws, I decided to forgo the 300 miles each direction trip  
13 and go to the 45 mile trip to River City RV in Sherwood,  
14 AR a Forest River dealer. Prime Time is a branch of Forest  
15 River. I finally picked it up from them on Sept. 17, 2016,  
16 seven weeks later. When they called me to tell me it was  
17 ready they told me they could not get any of the problems  
18 to reoccur. As I was driving there, they called back and  
19 said they finally got the "potty water" to act like I said it  
20 was and after I arrived they said they could correct the  
21 problem. So I waited. Still no fix for the leaking roof, they  
22 said the sound system was fine, and so on.

23 As Fall was coming, J noticed when I was washing it that  
24 the cap on the front of the RV was fading. I called Colaws  
25 and Steve Jones, the service manager, informed me they  
26 had several similar problems  
27 with some of the other similar Forest River RVs they had  
28 sold. He asked me to drop it by (another round trip of 600  
miles) so I dropped it Dec. 3, 2016 as an ice storm was  
blowing in. I did not get it back until April 2017 another 5  
months.

*June 2017*

We headed to CO and excited about our trip. Still having  
issues with potty water and grey water leaking, we did the  
best we could in our now a little over one year old RV. As  
we moved from RMNP to Fun Valley, CO which we had  
been to 8 days before RMNP, I was hooking up the sewage  
line and as I removed the cap from the RV I heard an  
explosion and felt the compression from it so loud my wife

1 came running around the RV to find me cover in our  
2 family "poop." It was in my mouth, my nose, my eyes,  
3 covering me. Never in 25 years of RVing have I ever had  
4 that happen or heard of it happening. These things are  
5 vented to prevent it from happening, so again my barely a  
6 year old RV betrayed me and my wife again.

7 Then I had some men who do a mobile RV wash business  
8 look at me and say, "the decals on the front of your vehicle  
9 are bubbling up and they are out of line." These are the  
10 decals that had to be replaced after Colaws removed the  
11 fading clear coat and put new clear coat on.

12 July 17, 2017 I dropped my RV back at Colaws so they  
13 could correct the decals and a list of other things that still  
14 were not working. (Leak on the roof, automatic leveling  
15 system, decals, large screws missing from the under  
16 pinning of the king pin area, etc.) Now I was dealing with  
17 a new Service Manager by the name of John who had  
18 heard about my plight and apologized profusely on  
19 numerous occasions. After contacting the company to get  
20 the decals, he reported they arrived but not au of th em.  
21 After many weeks, in my frustration, I called Prime Time  
22 on Oct. 13, 2017 and talked with Jeff Ranks and explained  
23 the situation. He said he would see what he could do. I  
24 called back and left a message with Jeff on Oct. 18, 2017.  
25 Not long after that the decals arrived.

26 John, the service manager at Colaws, called and said the  
27 RV was ready. He told me they found the roof leak issue  
28 and corrected it. A gasket around the air conditioner had  
been installed incorrectly.

Oct . 28, 2017

I arrived at Colaws 300 more miles one way to find the RV  
filthy, the decals not lined up and the clear coat starting to  
chip loose. I also noticed one of the main landing jacks  
leaning slightly. Upon pointing it out, one of the really good  
technicians noticed the medal tubing was severely bending  
and about to break, so he repaired it with reinforced metal.  
Upon checking the same jack on the other side, he found  
the same issue, so he repaired that problem.

300 miles back home and the decals are wrinkled and the clear coat is coming off.

Enough is enough. I have been making payments all this time and I have missed many RVing trips because it was in the shop. Makes me nervous to take it out anymore."

15. Since purchase, Plaintiffs have returned their **SPARTAN**, to the Defendant and its authorized warranty service dealers for repairs on numerous occasions. Despite this prolonged period during which Defendant were given the opportunity to repair the **SPARTAN**,, the more significant and dangerous conditions were not repaired. Defendant failed to repair the vehicle so as to bring it into conformity with the warranties set forth herein. From the date of its purchase, the **SPARTAN**, continues to this day to exhibit some or all of the non-conformities described herein.

16. The defects experienced by Plaintiffs with the **SPARTAN**, substantially impaired its use, value and safety.

17. Plaintiffs directly notified all Defendants and each of them of the defective conditions of the **SPARTAN**, on numerous occasions. Plaintiffs notified Defendants that they wanted a rescission of the sale of the **SPARTAN**, but Defendants have failed and refused to buy back Plaintiffs' defective **SPARTAN**,.

18. Since purchase, Plaintiffs have returned their **SPARTAN**, to Defendants and authorized warranty service dealers for repairs on numerous occasions. Despite this prolonged period during which Defendants were given the opportunity to repair the **SPARTAN**,, the more significant and dangerous conditions were not repaired. Defendants failed to repair the vehicle so as to bring it into conformity with the warranties set forth herein. From the date of its purchase, the **SPARTAN**, continues to this day to exhibit some



or all of the non-conformities described herein.

19. The defects experienced by Plaintiffs with the **SPARTAN**, substantially impaired its use, value and safety.

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## VI. Causes of Action

### COUNT 1: VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

21. Plaintiffs re-allege and incorporate by reference as though fully set forth herein each and every allegation contained in the preceding paragraphs.

22. Plaintiffs are a "consumer" as defined in the Magnuson-Moss Warranty Act (hereinafter "Warranty Act"), 15 U.S.C. § 2301(3).

23. Defendants, **FOREST RIVER**, is a "supplier" and "warrantor" as defined in the Warranty Act, 15 U.S.C. § 2310(4) and (5).

24. The **SPARTAN**, hereinabove described is a "consumer product" as defined in the Warranty Act, 15 U.S.C. § 2301(1), because it is normally used for personal purposes and Plaintiffs in fact purchased it wholly or primarily for personal use.

25. The express warranties more fully described hereinabove pertaining to the **SPARTAN**, is a "written warranty" as defined in the Warranty Act, 15 U.S.C. § 2301(6).

26. The actions of Defendants and each of them as hereinabove described, in failing to tender the **SPARTAN**, to Plaintiffs free of defects and refusing to repair or replace the defective **SPARTAN**, tendered to Plaintiffs constitute a breach of the written and

1 implied warranties covering the **SPARTAN**, and hence a violation of the Magnuson-Moss  
2 Warranty Act.

3 27. Plaintiffs have performed all things agreed to and required of them under the  
4 purchase agreement and warranty, except as may have been excused or prevented by the  
5 conduct of Defendants as herein alleged.

6 28. As a direct and proximate result of the acts and omissions of Defendants and  
7 each of them as set forth hereinabove, Plaintiffs have been damaged hereinabove in an  
8 amount in excess of \$75,000.00 according to proof at trial.

9 29. Pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2),  
10 Plaintiffs are entitled to recover as part of the judgment, costs and expenses of the suit  
11 including attorney's fees based on actual time expended. As a proximate result of the  
12 misconduct of Defendants as alleged herein, and in an effort to protect their rights and to  
13 enforce the terms of the agreement as more particularly set forth above, it has become  
14 necessary for Plaintiffs to employ the legal services of Richard C. Dalton. Plaintiffs have  
15 incurred and continue to incur legal fees, costs and expenses in connection therewith.

16 **COUNT 2: BREACH OF EXPRESS WARRANTIES AND/OR CONTRACT**

17 30. Plaintiffs re-allege and incorporate by reference as though fully set forth  
18 herein each and every allegation contained in the preceding paragraphs.

19 31. Th Defendants' advertisements and statements in written promotional and  
20 other materials contained broad claims amounting to a warranty that Plaintiffs' **SPARTAN**,  
21 or those similarly situated were free from inherent risk of failure or latent defects. In  
22 addition, the Defendants issued an expressed written warranty which covered the  
23 **SPARTAN**, and warranted that the **SPARTAN**, was free of defects in materials and work  
24  
25  
26  
27  
28

1 quality at the time of delivery.

2 32. As alleged above, the Defendants breached its warranties by offering for sale,  
3 and selling as safe to Plaintiffs, an **SPARTAN**, that was latently defective, unsafe, and likely  
4 to cause economic loss to Plaintiffs.  
5

6 33. In breach of the foregoing warranties, the Defendants have failed to correct  
7 said defects.  
8

9 34. The damages Plaintiffs have suffered are a direct and proximate result of  
10 Defendant' actions in this matter include, but are not limited to, diminution in value of the  
11 vehicle; costs of repairs; expenses associated with returning the vehicle for repeated repair  
12 attempts; loss of wages; loss of use; damages; and attorney fees.  
13

### 14 **COUNT 3: BREACH OF IMPLIED WARRANTIES**

15 35. Plaintiffs reallege and incorporate herein by reference each and every  
16 allegation set forth in the preceding paragraphs.

17 36. The Defendants impliedly warranted that Plaintiffs' **SPARTAN**,, which it  
18 designed, manufactured, and sold, were merchantable and fit and safe for their ordinary use,  
19 not otherwise injurious to consumers, and would come with adequate safety warnings.  
20

21 37. Any purported limitation of the duration of the implied warranties contained  
22 in the written warranties given by Defendants is unreasonable and unconscionable and void  
23 under the principles of estoppel, because Defendants knew the defects existed and might not  
24 be discovered, if at all, until the **SPARTAN**, had been driven for a period longer than the  
25 period of the written warranty, and Defendants willfully withheld information about the  
26 defects from Plaintiffs.  
27

28 38. Because of the defects, Plaintiffs' **SPARTAN**, is unsafe and unfit for use and

1 has caused economic loss to the Plaintiffs. Therefore, the Defendants breached the implied  
2 warranty of merchantability.

3 39. The damages Plaintiffs have suffered are a direct and proximate result of  
4 Defendants' actions in this matter include, but are not limited to, diminution in value of the  
5 vehicle; costs of repairs; expenses associated with returning the vehicle for repeated repair  
6 attempts; loss of wages; loss of use; damages; and attorney fees.  
7

## 8 **VII. Economic and Actual Damages**

9  
10 40. Plaintiffs sustained the following economic and actual damages as a result of  
11 the actions and/or omissions of Defendants described herein above:

- 12
- 13 a.. Out of pocket expenses, including but not limited to the money paid  
14 towards the note securing the vehicle;
  - 15 b. Loss of use;
  - 16 c. Loss of the "benefit of the bargain";
  - 17 d. Diminished or reduced market value; and
  - 18 e. Costs of repairs.  
19

## 20 **XI. Attorney Fees and Costs**

21 41. Plaintiffs are entitled to recover as part of the judgment, costs and expenses  
22 of the suit including attorney's fees based on actual time expended. As a proximate result  
23 of the misconduct of Defendants as alleged herein, and in an effort to protect their rights and  
24 to enforce the terms of the agreement as more particularly set forth above, it has become  
25 necessary for Plaintiffs to employ the legal services of Richard C. Dalton. Plaintiffs have  
26 incurred and continue to incur legal fees, costs and expenses in connection therewith.  
27  
28

**XII. Prayer**

42. For these reasons, Plaintiffs pray for judgment against the Defendants for the following:

- a. For general, special and actual damages according to proof at trial;
- b. Rescinding the sale of the **2016 PRIMETIME SPARTAN** bearing VIN **5ZT3ST2FXGG300641** and returning to Plaintiffs the purchase price including all collateral costs at the time of the sale, any and all finance charges, insurance premiums, maintenance costs, repair costs, and damages;
- c. For incidental and consequential damages according to proof at trial;
- d. Out of pocket damages for expenditures related to any cost of repairs, deductibles; and towing charges.
- e. Any diminution in value of the **SPARTAN**, attributable to the defects;
- f. Past and future economic losses;
- g. Prejudgment and post-judgment interest;
- h. Damages for loss of use of vehicle;
- I. Civil Penalties and/or Punitive damages;
- j. Damages for mental anguish;
- k. Attorney fees;
- l. Costs of suit, expert fees and litigation expenses; and
- m. All other relief this Honorable Court deems appropriate.

**XIII. Demand for Jury Trial**

43. Plaintiffs hereby demands trial by jury to the extent authorized by law.

1 RESPECTFULLY SUBMITTED:

2 BY: /s/ *Richard C. Dalton*

3 Richard C. Dalton

4 Texas Bar No. 24033539

5 Louisiana Bar No. 23017

6 California Bar No. 268598

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